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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 DONNA K. HICKMAN,
12 Plaintiff

13 v.

14 NANCY A. BERRYHILL, Acting
15 Commissioner of Social Security,
16 Defendant.

Case No. 8:17-cv-00475-GJS

**MEMORANDUM OPINION AND
ORDER**

17 **I. PROCEDURAL HISTORY**

18 Plaintiff Donna K. Hickman (“Plaintiff”) filed a complaint seeking review of
19 Defendant Commissioner of Social Security’s (“Commissioner”) denial of her
20 application for Disability Insurance Benefits (“DIB”). The parties filed consents to
21 proceed before the undersigned United States Magistrate Judge [Dkts. 11, 12] and
22 briefs addressing disputed issues in the case [Dkt. 21 (“Pltf.’s Br.”) & Dkt. 22
23 (“Def.’s Br.”)]. The Court has taken the parties’ briefing under submission without
24 oral argument. For the reasons set forth below, the Court affirms the decision of the
25 ALJ and orders judgment entered accordingly.

26 **II. ADMINISTRATIVE DECISION UNDER REVIEW**

27 On December 29, 2013, Plaintiff filed an application for DIB, alleging that
28 she became disabled as of July 1, 2010. [Dkt. 16, Administrative Record (“AR”)]

1 15, 122-125.] The Commissioner denied her initial claim for benefits on May 20,
2 2014. [AR 13; 54-66.] On May 6, 2015, a hearing was held before Administrative
3 Law Judge (“ALJ”) John W. Wojciechowski. [AR 27-51.] On June 17, 2015, the
4 ALJ issued a decision denying Plaintiff’s request for benefits. [AR 13-26.] Plaintiff
5 requested review from the Appeals Council, which denied review on January 19,
6 2017. [AR 1-6.]

7 Applying the five-step sequential evaluation process, the ALJ found that
8 Plaintiff was not disabled. *See* 20 C.F.R. §§ 404.1520(b)-(g)(1). At step one, the
9 ALJ concluded that Plaintiff has not engaged in substantial gainful activity since
10 July 1, 2010, the alleged onset date, through December 31, 2013, her date last
11 insured. [AR 15.] At step two, the ALJ found that Plaintiff suffered from the
12 following severe impairments: aortic valve disease, congestive heart failure status
13 post pacemaker implant, multiple trigger finger releases and hypertension. [*Id.*
14 (citing 20 C.F.R. § 404.1520(c)).] Next, the ALJ determined that Plaintiff did not
15 have an impairment or combination of impairments that meets or medically equals
16 the severity of one of the listed impairments. [AR 15 (citing 20 C.F.R. Part 404,
17 Subpart P, Appendix 1; 20 C.F.R. §§ 404.1520(d), 404.1525, 404.1526.)]

18 The ALJ found that Plaintiff had the following residual functional capacity
19 (RFC):

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21 the [Plaintiff] can lift and/or carry twenty pounds
22 occasionally, ten pounds frequently; the claimant can
23 stand, walk or sit for six hours out of an eight-hour
24 workday; the claimant can occasionally climb, balance,
25 stoop, kneel, crawl and crouch; the claimant cannot climb
26 using ladders, ropes or scaffolds; the claimant can
27 frequently handle and finger bilaterally.
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[AR 16-20.] Applying this RFC, the ALJ found that Plaintiff was capable of
performing past relevant work as a title examiner (DOT 119.287-010) as generally
performed and, thus, is not disabled. [AR 21-22.]

III. GOVERNING STANDARD

Under 42 U.S.C. § 405(g), the Court reviews the Commissioner’s decision to determine if: (1) the Commissioner’s findings are supported by substantial evidence; and (2) the Commissioner used correct legal standards. *See Carmickle v. Comm’r Soc. Sec. Admin.*, 533 F.3d 1155, 1159 (9th Cir. 2008); *Hoopai v. Astrue*, 499 F.3d 1071, 1074 (9th Cir. 2007). Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (internal citation and quotations omitted); *see also Hoopai*, 499 F.3d at 1074. The Court will uphold the Commissioner’s decision when the evidence is susceptible to more than one rational interpretation. *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005). However, the Court may review only the reasons stated by the ALJ in his decision “and may not affirm the ALJ on a ground upon which he did not rely.” *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007).

IV. DISCUSSION

Plaintiff contends that the ALJ erred in his assessment of Plaintiff’s credibility.

A. The ALJ’s Decision Sets Forth Specific Reasons for Finding Plaintiff Not to Be Credible.

Plaintiff first challenges whether the ALJ provided specific reasons for rejecting Plaintiff’s testimony about her symptoms. “[T]o ensure our appellate review is meaningful,...we require the ALJ to specifically identify the testimony [from a claimant] she or he finds not to be credible and...explain what evidence undermines the testimony.” *Treichler v. Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090, 1102 (9th Cir. 2014) (internal quotation omitted). Accordingly, “[g]eneral findings are insufficient.” *Id.* (internal quotation omitted). And as the Ninth Circuit held in *Treichler*, “boilerplate statement[s]” and “introductory remark[s],” *without more*, “fall[] short of meeting the ALJ’s responsibility to provide ‘a discussion of

1 the evidence’ and ‘the reason or reasons upon which’ [her] adverse determination is
2 based.” *Id.* at 1103.¹

3 Here, Plaintiff claims that the ALJ violated his duty to provide specific
4 reasons because the ALJ, according to Plaintiff, gave only the following boilerplate:

5 After careful consideration of the evidence, the
6 undersigned finds that the claimant’s medically
7 determinable impairments could reasonably be expected
8 to cause the alleged symptoms; however, the claimant’s
9 statements concerning the intensity, persistence and
10 limiting effects of these symptoms are not credible to the
11 extent those statements are inconsistent with the residual
12 functional capacity assessment herein.

13 [Pltf.’s Br. at 5 (quoting AR 19).] And this Court would agree, if that were the only
14 thing the ALJ said about Plaintiff’s credibility. But the ALJ said far more.² First,
15 the ALJ explained that the “physical and mental ability and social interactions
16 required in order to perform [her] activities are the same as those necessary for
17 obtaining and maintaining employment and are inconsistent with the presence of an
18 incapacitating or debilitating condition.” [AR 18.] Second, the ALJ contrasted
19 Plaintiff’s description of her disabling pain with her conservative treatment. [*Id.*]
20 Third, the ALJ explained that the medical records are “inconsistent with the alleged
21 severity of her symptoms and functional limitations and diminishes her credibility of
22 those allegations.” [AR 19.]

23 Plaintiff’s own brief further undercuts her position. After claiming that the
24 ALJ’s decision does not present specific reasons for discounting her testimony,
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27 ¹ Relevant here, the Ninth Circuit explained in *Treichler* that “after making [a
28 certain] boilerplate statement, the ALJs typically identify what parts of the
claimant’s testimony were not credible and why.” *Treichler*, 775 F.3d at 1103.
Thus, it is fair to say that there is no black letter rule against using boilerplate
introductory statements.

² Whether the ALJ stated his bases for her credibility determination is a question
different from whether the ALJ’s reliance on those bases was appropriate. The latter
is addressed *infra* at Part IV.B.

1 Plaintiff attacks the ALJ's reasons for finding her not to be credible. [*See, e.g.,*
2 Pltf.'s Br. at 6 ("it appears that the ALJ simply rejects Hickman's testimony based
3 on a belief that the testimony is not credible because it lacks support in the objective
4 medical evidence."); *id.* at 15 ("The ALJ's other observation regarding Ms.
5 Hawkin's appearance at the hearing is also not a legally sufficient rationale."); *id.* at
6 9 ("Even the fact that Hickman has some ability to perform something is not reason
7 enough to find him [sic] not credible."); *id.* at 10 ("The ALJ also rejects Hickman
8 because the ALJ believes Hickman has only had care that was conservative in
9 nature.").] Accordingly, the ALJ provided specific reasons for the credibility
10 determination.

11 **B. The ALJ's Opinion Provides At Least One Clear and Convincing**
12 **Reason for the Credibility Determination.**

13 Plaintiff next asserts that the ALJ failed to state sufficient reasons for
14 discounting her credibility. [Pltf.'s Br. at 6-13.] Because there is no allegation of
15 malingering and the ALJ found that "claimant's medically determinable
16 impairments could reasonably be expected to cause the alleged symptoms" [AR 19],
17 the ALJ's reasons must be clear and convincing. *Lingenfelter v. Astrue*, 504 F.3d
18 1028, 1036 (9th Cir. 2007). Even if "the ALJ provided one or more invalid reasons
19 for disbelieving a claimant's testimony," if he "also provided valid reasons that were
20 supported by the record," the ALJ's error "is harmless so long as there remains
21 substantial evidence supporting the ALJ's decision and the error does not negate the
22 validity of the ALJ's ultimate conclusion." *Molina v. Astrue*, 674 F.3d 1104, 1115
23 (9th Cir. 2012) (internal quotation omitted).

24 Here, the ALJ gave three reasons to reject Plaintiff's credibility: (1)
25 inconsistencies between Plaintiff's testimony and her daily activities; (2) Plaintiff's
26 conservative treatment; and (3) inconsistencies between the objective medical
27 evidence and Plaintiff's allegations of disabling limitations. The Court takes each in
28 turn.

1 **1. Inconsistencies Between Plaintiff's Testimony And Her Daily** 2 **Activities**

3 The ALJ found that Plaintiff's activities of daily living were inconsistent with
4 her claim that she was unable to perform substantial gainful activity. [AR 18.]
5 *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998) (finding that if a Plaintiff's
6 level of activities is inconsistent with her claimed limitations then the activities of
7 daily living have a bearing on the Plaintiff's credibility). Plaintiff testified that she
8 lived alone, drove once a day, and did her own shopping. [AR 31, 38.] She testified
9 that she spent most of her time with her family and her eleven grandchildren. [AR
10 41-42.] In addition, until 2014, Plaintiff played piano and bowled once a week.
11 [AR 37-38.] In fact, Plaintiff bowled in the 2014 national competition. [AR 41.] In
12 addition, in her December 2013 function report, Plaintiff reported that she had no
13 issues with personal care, was able to prepare simple meals for herself, and her
14 children assisted her with the household chores. [AR 173-174.] The ALJ found that
15 such activities, even if not indicative by itself of an ability to work, were
16 inconsistent with Plaintiff's claimed limitations, such as her inability to stand more
17 than fifteen minutes, lift more than two pounds, pay attention for more than ten to
18 fifteen minutes, and complete tasks. [AR 39-40, 177.] *See Molina*, 674 F.3d at
19 1113 ("Even when those activities suggest some difficulty in functioning, they may
20 be grounds for discrediting the claimant's testimony to the extent they contradict
21 claims of a totally debilitating impairment."). *Valentine v. Comm'r of Soc. Sec.*, 574
22 F.3d 685, 693 (9th Cir. 299) (although daily activities did not show that the Plaintiff
23 could work, "it did suggest that Valentine's later claims about the severity of his
24 limitations were exaggerated."). Plaintiff does not address the finding of
25 inconsistency, let alone argue it is unsupported by substantial evidence. Plaintiff
26 only argues that her daily activities are not sufficient, by themselves, to find her
27 capable of working—a finding the ALJ did not make. Accordingly, the Court finds
28 that ALJ properly determined that Plaintiff's daily activities contradicted her claims

1 of debilitating impairment. This is a clear and convincing reason for finding
2 Plaintiff less than fully credible. The Court's analysis could end here.

3 **2. Plaintiff's Conservative Treatment**

4 The ALJ's reliance on Plaintiff's treatment history was also a clear and
5 convincing reason for finding her less than fully credible. It is settled law that an
6 ALJ may consider "unexplained or inadequately explained failure to seek treatment
7 or to follow a prescribed course of treatment" to bear on a claimant's credibility.
8 *Tomasetti v. Astrue*, 533 F.3d 1035, 1039 (9th Cir. 2008); *see Burch*, 400 F.3d at
9 681 ("The ALJ is permitted to consider lack of treatment in his credibility
10 determination.").

11 Plaintiff testified at the hearing that she is unable to work because she has
12 difficulty with concentration and memory due to a head injury she sustained in
13 2010. [31; 33-35; 42-44.] Plaintiff testified that she saw a neurologist for her head
14 injury and that the neurologist prescribed Prozac. [AR 17; 35-36.] The neurologist
15 also recommended that Plaintiff play computerized games, puzzles, and "old games"
16 to help improve her cognitive skills. [AR 456.] Plaintiff stated that she did not
17 receive any other treatment for her mental condition. [AR 36.]

18 Plaintiff argues that her treatment was not conservative because she received
19 surgery to fix her pacemaker. [Pltf.'s Br. at 11.] However, Plaintiff testified that
20 her "pacemaker works properly now." [AR 34.] The reason Plaintiff cannot work is
21 because of "residual [effects] from the head injury that [she] suffered" when she fell
22 in 2010. Thus, Plaintiff's surgery is not relevant to determining whether the
23 treatment Plaintiff received for her head injury was conservative. The Court finds
24 that the ALJ properly determined that Plaintiff's concentration and memory
25 limitations were not as severe as alleged based on the limited medical treatment
26 Plaintiff received.

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3. Inconsistencies Between Plaintiff's Testimony And The Objective Medical Evidence

Lastly, the ALJ found that the objective medical evidence was inconsistent with Plaintiff's testimony regarding her limitations. [AR 18-19.] Plaintiff asserts that the ALJ improperly relied on a lack of objective evidence in rejecting her subjective symptom testimony because "rejection of a claimant's testimony based on a lack of objective evidence is always legally insufficient." [Pltf.'s Br. at 7.] This is incorrect. "While subjective pain testimony cannot be rejected on the *sole ground* that it is not fully corroborated by objective medical evidence, the medical evidence is still a relevant factor in determining the severity of the claimant's pain and its disabling effects." *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001) (citing 20 C.F.R. § 404.929(c)(2) (emphasis added)). Here, the objective medical evidence is one of three reasons the ALJ gave to discount Plaintiff's credibility (the Court found the first two reasons to be proper in *supra* sections IV.B.1 and IV.B.2).

As the ALJ noted, Plaintiff alleged that she was unable to work due to concentration and memory limitations she suffered from after receiving a head injury in 2010. [AR 17, 42-44.] However, Plaintiff's testimony was undermined by an April 2014 neurological examination, May 2014 CT scan of Plaintiff's head, and a May 2014 complete psychiatric examination, all of which revealed normal findings. [AR 15-16; 334-335; 454-455; 458.] Plaintiff also testified that she was unable to be on her feet for more than fifteen minutes before needing to rest and sit due to disc bulges in her back. [AR 17, 40.] However, as the ALJ pointed out, Plaintiff's physical examinations throughout the relevant period consistently revealed normal findings. [AR 18-19; 239; 241; 275; 284; 306; 311; 317; 510; 625-626.] Plaintiff's pacemaker reports also revealed a properly functioning pacemaker without reprogramming, good sensing and pacing threshold and no atrial fibrillation. [AR 20; 374.] Additionally, Plaintiff's neurologist recommended that Plaintiff perform thirty minutes of aerobic exercise daily, which further undercuts Plaintiff's

1 allegation that she could not be on her feet for more than fifteen minutes. [AR 456.]
2 Thus, the ALJ properly found that Plaintiff's testimony was inconsistent with the
3 medical evidence.

4 **V. CONCLUSION**

5 For all of the foregoing reasons, **IT IS ORDERED** that the decision of the
6 Commissioner finding Plaintiff not disabled is **AFFIRMED**.

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8 **IT IS SO ORDERED.**



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10 DATED: June 6, 2018

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12 GAIL J. STANDISH
13 UNITED STATES MAGISTRATE JUDGE
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